IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 448 of 1998

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PATEL JETHABHAI JOITARAM &3 - Petitioner(s)

Versus

PATEL MANILAL BHAGVANDAS &2 - Respondent(s)

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Appearance :

MR VC DESAI for Petitioner No(s).: 1,2,3.

MR HEMANT S SHAH for Respondent No(s).: 1,2.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 20/06/2005

ORAL JUDGMENT

1.By filing instant petition under Section 115 of the Code of Civil Procedure, the petitioners seek to challenge the order dated 3.2.1998 recorded below application Ex.21 in Regular Civil Appeal No.64 of 1996 by the learned 5th Extra Assistant Judge, Mehsana by which the application filed by respondents/original plaintiffs

seeking amendment in the plaint has been allowed on condition of payment of cost of Rs.250/- to the petitioners.

1. Having heard Mr. V.C. Desai, learned advocate for the petitioners and having perused the impugned order and more particularly the amendment made in Section 115 of the Code to the effect that interlocutory orders are no longer reviewable under section 115 of the Code due to substitution of the proviso which inter alia deleted erstwhile clause (1) (b) of the proviso.

1. It has been held by the Supreme Court of India in the case of **Surya Dev Rai v. Ram Chander Rai**, (2003) 6 SCC 675, that Section 115 of the Code as amended by Act 46 of 1999, does not now permit a revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the substitution of the proviso to Section 115 (1) of the Code by said Amendment Act 46 of 1999. The Supreme Court has further observed that the effect of the erstwhile clause (b) of the proviso being deleted and a new proviso having been inserted, is that the revisional jurisdiction, in respect of an interlocutory order passed in a trial or other proceedings, is substantially curtailed. The revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

1. Moreover, the Supreme Court in the case of **Shiv Shakti Co-operative Housing Society v. M/s. Swaraj Developers,** 2003 AIR SCW 2445 has held that interim orders or orders which do not finally decide lis cannot be subject matter of revision. The mode of procedure altered by statutory change i.e., applications pending before amendment came into force not saved by section 32 (2) (i) of the amendment Act. The maintainability of revision applications admitted before amendment therefore has to be decided as per altered mode i.e., as per amended provisions since no substantive right is involved and in such cases provisions of section 6 of the General Clauses Act cannot be applied.

Therefore, in substance the Supreme Court has said that the amended proviso to Section 113 (3) is retrospective in operation and therefore maintainability of revision applications admitted before amendment has to be decided as per altered mode i.e., as per amened provisions.

(A.M. Kapaida, J.)

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(karan)